



ITG News

Keeping First Nations Informed



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Message From The Director



As I write, we have just completed the initial meetings to listen to tribal input on the development of an IRS/Tribal Consultation Policy. The 12 meetings held during the past nine months took us to every area of Indian Country. While at times it seemed that we would never complete the meeting process, every one of them provided us with valuable ideas and was an enriching experience. I was particularly pleased by the enthusiastic response we received from many of the participants, and the open exchange of ideas not only gave us critical information from which to begin to frame a policy, but also gave us feedback on the successes and failures of our current relationship with tribes.

I want to thank each of you that took the time to contribute to this process. I realize that many of you were not able to join us. I also realize that many of you may still wish to submit comments and share ideas. That opportunity will arise starting in late January as we embark on the second phase of the policy development process.

By January 31st we will post a summary of each of the 12 meetings on our web site at www.irs.gov/tribes. I encourage each of you to review the comments contained therein. We will incorporate a link that will enable further comments to be submitted for a 90 day period, so that everyone can provide feedback on the input from the meetings. Following that period, we will begin to create a draft Consultation Policy that will be further shared for comment as we proceed to the final stages.

Once again, thanks to everyone who has participated to date. I look forward to the continuing involvement by all interested parties as we craft a policy that best meets the needs of all parties.

Christie Jacobs

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To add your name or e-mail address to our mailing list, please contact us via e-mail at Carol.A.Czolowski@irs.gov, or call Carol Czolowski at (801) 620-5048

*Account or Tax Questions??
Call Customer Account Services at
1-877-829-5500*

Federal Tax Calendar for First Quarter 2004

January 2004

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5 * Payroll date 12/27-12/30	6	7 * Payroll date 12/31-1/2	8	9 * Payroll date 1/3 -1/6	10 Employees report December tips to employer
11	12 Employees report December tips to employer	13	14 * Payroll date 1/7 -1/9	15 ** Monthly payroll/non-payroll tax deposit for December	16 * Payroll date 1/10-1/13	17
18	19	20	21	22 * Payroll date 1/14-1/16	23 * Payroll date 1/17-1/20	24
25	26	27	28 * Payroll date 1/21-1/23	29	30 * Payroll date 1/24-1/27	31

February 2004

SUN	MON	TUE	WED	THU	FRI	SAT
1	2 Issue Forms W-2/W-2G/1099 to recipients of income	3	4 * Payroll date 1/28-1/30	5	6 * Payroll date 1/31-2/3	7
8	9	10 Employees report January tips to employer	11 * Payroll date 2/4 -2/6	12	13 * Payroll date 2/7 -2/10	14
15	16	17 ** Monthly payroll/non-payroll tax deposit for January	18	19 * Payroll date 2/11-2/13	20 * Payroll date 2/14-2/17	21
22	23	24	25 * Payroll date 2/18-2/20	26	27 * Payroll date 2/21-2/24	28
29						

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule.

** = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed.

March 2004

SUN	MON	TUE	WED	THU	FRI	SAT
	1 File Forms W-3 and 1096 filed by paper or magnetic media	2	3 * Payroll date 2/25-2/27	4	5 * Payroll date 2/28-3/2	6
7	8	9	10 * Payroll date 3/3-3/5 Employees report February tips to employer	11	12 * Payroll date 3/6-3/9	13
14	15 ** Monthly payroll/non-payroll tax deposit for February	16	17 * Payroll date 3/10-3/12	18	19 * Payroll date 3/13-3/16	20
21	22	23	24 * Payroll date 3/17-3/19	25	26 * Payroll date 3/20-3/23	27
28	29	30	31 * Payroll date 3/24-3/26 File Forms W-3 and 1096 filed electronically			

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule.

** = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed

Return Filing Dates

By February 2

File Form 941 for the fourth quarter of 2003. If the tax was deposited in full and on time, file by February 10.

File Form 940 if not participating and compliant with State Unemployment, or not an entity 100% owned by the tribe. If the tax was deposited in full and on time, file by February 10.

File Form 730 on applicable wagers accepted during December 2003.

File Form 945 for 2003. If the tax was deposited in full and on time, file by February 10.

By March 1

File Form 730 for applicable wagers accepted during January 2004.

File Form 8027 for food and beverage establishments meeting the 80 equivalent hour test.

For entities with Tip Rate Determination Agreement or a Gaming Industry Tip Compliance Agreement, file the annual report required by the agreement

By March 31

File Form 730 for applicable wagers accepted during February 2004.

On-Line Employment Tax Guide

Employees from the office of Indian Tribal Governments recently completed a detailed Employment Tax Guide for Tribal Governments that has been posted to the ITG Internet site at www.irs.gov/tribes. The final document contains extensive narrative on withholding, deposit, and return filing requirements, as well as discussion on taxable benefits and remittance issues. Detailed examples are included as an aid to the proper completion of various forms.

We hope that this Guide is a useful reference source. We intend to update it regularly so that it remains current. We welcome your comments, as well as suggestions for further enhancements to both this on-line guide and our web site in general.

ALERT

Claims for refunds of Federal Unemployment Taxes paid for the tax year of 2000 must be received by the Internal Revenue Service before January 31, 2004.

Federal Unemployment Tax

The Consolidated Appropriations Act of 2000 provided that tribal entities did not have to pay Federal Unemployment Tax (FUTA) or file Forms 940 if they participated in State Unemployment Tax (SUTA) programs under either a contributory or reimbursement basis. While SUTA participation could result in savings to tribes, the Act also mandated that the electing tribal entity remain in compliance with the state programs in order to secure relief from FUTA. Any failure to pay amounts due to the state unemployment program results in the reactivation of the requirement to pay federal unemployment tax.

While it may seem that this change is relatively simple, it has added complexities. One issue is the need for the IRS and State Unemployment agencies to exchange information on tribal participation and compliance with SUTA. An additional complexity is the need to ensure that our records accurately reflect the filing requirement for each tribal entity, and are continually updated as SUTA participation and compliance changes.

As a result of these complexities, we have encountered several situations where tribes have received IRS notices soliciting Form 940, even though they are participating in SUTA and are in full compliance. We have determined that most of these notices are in error, and we are completing steps to correct our records. We apologize for any inconvenience, but we cannot guarantee that additional errors will not occur. If your entity receives a notice regarding Form 940, but is participating in SUTA and is in full compliance, **please contact your ITG Specialist as soon as possible**. We will investigate the matter, and either make the necessary correction in our records, or advise you why the notice was received.

Our web site at www.irs.gov/tribes contains an extensive listing of Frequently Asked Questions, that may assist you in resolving issues, including employment tax questions. The site also allows for the submission of e-mail inquiries if you cannot locate an answer, or cannot reach your assigned ITG Specialist for assistance.

Pay Federal Taxes Electronically

Electronic Federal Tax Payment System.

It's easy. If you can use a phone or a computer, you can pay your federal taxes through EFTPS, a service offered FREE by the U.S. Department of the Treasury.

Enroll online.

Enter your payment information one day in advance online or by phone.

Receive an acknowledgement number as a receipt for every transaction.

No more last minute trips to the bank or Post Office.

No lost or misdirected payments.

Avoid late penalties by scheduling your payments in advance.

EFTPS — It's free. It's accurate. It's convenient and safe. What more can we say.

ENROLL NOW visit www.eftps.gov



Reporting Tribal Distributions

Here is some important information if you are a member of a federally recognized tribe and have received income from tribal per capita distributions or Indian gaming proceeds. Reported to you on Form 1099-MISC, this income should be reported on Line 21 of Form 1040. A proper description of the income is necessary to allow the return to process as quickly as possible! For paper or e-file returns, please enter one of the following descriptions on Line 21:



**Indian Gaming Proceeds
Indian Tribal Distrib
Native American Distrib**



You may obtain additional information by calling 800-829-1040 or from the Indian Tribal Governments' Web site at:

www.irs.gov/tribes

Tax Schemes in Indian Country

Abusive schemes to avoid taxation are a current area of focus by both the Internal Revenue Service and Congress. While tax shelters and offshore schemes have existed for several decades, they are receiving renewed interest in an era of globalization of our economy, and tight fiscal constraints for both businesses and governments.

Promoters of schemes to avoid or evade taxation have continually devised new “products” to market to anyone interested in saving money (and that will always be a large audience). In recent years, they have focused some attention on Indian tribes, with particular emphasis on exploiting their tax status as a government. The schemes include, but are not limited to:

- § joint ventures between tribes and outside parties, where income, deductions, and capital gains are not allocated between the parties during the life of the venture in the same manner as the amount of each party's investment,
- § the misuse of sections of the law intended to benefit tribal entities, such as attempting to secure relief from FUTA by misrepresenting an entity as being tribally-owned, and
- § the misuse of tribal sovereignty or tribal enterprises to attempt to hide financial transactions from scrutiny by regulatory authorities.

If you are approached by someone who purports to have a business opportunity that is “too good to be true”, you need to be wary. Key considerations should include:

- § Is this the type of venture that governments usually enter?
- § Is the venture adequately supported by a reliable legal opinion from a disinterested third party?
- § Is the financial return equally balanced between the tribe and outside participants?
- § Is there substance to the transaction, or is it principally motivated as a tax avoidance scheme?
- § Is the promoter promising revenue to the tribe in exchange for tax savings to a third party?
- § What oversight role in the venture will the tribe have?

The office of Indian Tribal Governments wants to work with tribes to ensure that promoters of abusive schemes do not gain a foothold in Indian country. To that end, we encourage you to contact us if you are approached by anyone promoting what appears to be an abusive scheme. We will be creating a link on our web site that will include updates on identified schemes, as well as an e-mail link to report any schemes. In the interim, you can contact Ken Voght by telephone at (716) 686-4860, or by e-mail at kenneth.g.voght@irs.gov to discuss or report schemes.

The office of Indian Tribal Governments is forming a special unit to work with tribes on this issue. Our Abuse Detection And Prevention Team welcomes the involvement of any tribal stakeholders in addressing this area, and ensuring that outside parties do not attempt to use tribal sovereignty and status as a cover for illegal or unethical activities. By partnering together in this area we can meet the interests of all governments in protecting revenues and mitigating potential problems for the future.

Suspicious Activity Reporting and Casinos

The Financial Crimes Enforcement Network (FinCEN), made amendments to the regulations for the Bank Secrecy Act (BSA) on March 25, 2003. The amendments require casinos and card clubs to report suspicious transactions to the Department of Treasury. The amendments are part of the counter-money laundering program of the Treasury. Also contained in the amendment are changes to the requirement that casinos and card clubs maintain Bank Secrecy Act compliance programs.

With this rule, the Department of the Treasury has included casinos and card clubs in the suspicious transaction reporting regime to which the nation's banks, thrift institutions, credit unions, broker-dealers, and certain money services businesses are already subject.

Gaming establishments were generally made subject to the BSA in May 1985 by regulation issued earlier that year. More regulations were amended in later years for casinos reflecting the continuing determination not only that casinos were vulnerable to manipulation by money launderers and tax evaders but, more generally, that gaming establishments provide their customers with a financial product—gaming—which in turn offers a broad array of financial services that are similar to those offered by banks and other financial firms. Tribal gaming establishments authorized to do business under the Indian Gaming Regulatory Act became subject to the BSA on August 1, 1996.

The reporting of suspicious transactions is essential to an effective counter-money laundering program in the international consensus on the prevention and detection of money laundering. The importance of extending the counter-money laundering controls to “non-traditional” financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to recognize that non-bank providers of financial services as well as depository institutions are an attractive mechanism for, and are threatened by, money launderers.

The terms of the final rule are as follows:

- The dollar threshold for reporting suspicious transactions is \$5,000.
- All violations of law, other than those specifically exempted by the rule, are within the scope of required reporting.
- An exception from reporting relating to robbery or burglary has been added to the rule.
- The language requiring casinos to annually conduct independent testing of their compliance programs has been revised to permit casinos to determine the scope and frequency of such review based on an evaluation by the casino of money laundering risks posed by the casino's operations.
- The language requiring casinos annually to prepare a statement relating to the effectiveness of the casino's internal controls and procedures has been deleted.
- The language requiring casinos to incorporate into their compliance programs procedures for using all available information to determine the occurrence of suspicious transaction has been revised.

FinCEN wishes to emphasize that the rule is not intended to require casinos to review every transaction that exceeds the reporting threshold. Rather it is intended that casinos evaluate customer activity and relationships for money laundering risks and design a suspicious transaction-monitoring program that is appropriate for the particular casino in light of such risks. A well-implemented anti-money laundering compliance program should reinforce a casino's efforts in detecting suspicious activity. In addition, casinos are encouraged to report on a voluntary basis detected suspicious transactions that fall below the \$5,000 reporting threshold. For instance, when an identification requirement is triggered under BSA or other law and the customer submits an identification document that the casino suspects is false or altered, the transaction should be reported.

Continued on page 8

Suspicious Activity Reporting and Casinos Continued

FinCen recently changed the method of reporting suspicious transactions. Effective October 1, 2003, Form 102, Suspicious Activity Report by Casinos and Card Clubs (SARC) must be used to report suspicious transactions. The form must be filed within 30 days after the casino becomes aware of a suspicious transaction. Special provisions are made for situations requiring immediate attention (e.g., where delay in reporting might hinder law enforcement's ability to fully investigate the activity) in which case casinos are to immediately notify the appropriate law enforcement authority by telephone in addition to filing a SARC. In addition, casinos may wish to contact FinCEN's Financial Hotline (1-866-556-3974) which is available to voluntarily report suspicious transactions that may relate to terrorist activity. After filing the SARC, the casino must maintain a copy and the original related documentation (or business record equivalent) for a period of five years from date of filing.

Form 1099– MISC

Form 1099-MISC must be filed when:

- total payment(s) exceeds \$600 in a calendar year
- a payment is made in the course of a "trade or business"
 - for services (including parts and materials)
 - for rents
 - payment is made to a payee which is not a corporation
- a payment is for prizes and awards
 - Pow-Wow prizes
- a payment of medical and health care
- a payment of Per Capita Distributions
 - money or other things of value available to tribal members
 - from the net revenues of any tribal gaming activity or other sources of income

Use a Form W-9 to obtain the payee information needed to complete the Form 1099-MISC. This includes payee's name, business name, address, entity type (individual/sole-proprietor; partnership, corporation, other) and social security number/employer identification number. If the payee is an individual/sole-proprietor make sure you have gotten his/her name in addition to their business name and social security number rather than their employer identification number.

The Form 1099 must go the recipients by February 2, 2004 and filed with the Internal Revenue Service by March 1, 2004.

If you need help, it can be found at www.irs.gov

Publications: (available through web site)

Instructions for Forms 1099, 1098, 5498 and W-2G

Publication 1281 – "Backup Withholding on Missing and Incorrect Name/TINs"

Publication 1679 – "A Guide for Backup Withholding for Missing and Incorrect Name/TINs."

Publication 1586 – "Reasonable Cause Regulations and Requirements for Missing and Incorrect Names/TINs"

Questions relating to filing information returns (Forms 1096, 1098, 1099, 5498, 8027, W-2G, W-4) W-2 and W-3 should be directed to the IRS Martinsburg Computing Center at 866-455-7438 (not toll free).

You may also contact your local Indian Tribal Government Specialist or refer to the following web site for assistance: <http://www.irs.gov/govt/tribes/article/0,,id=96133,00.html>

Treatment and Reporting of Certain Payments to Election Workers

Election Workers

Election workers, like Tribal council members, are employees and must be issued Form W-2. Similarly, the employer does not withhold any federal income tax. However, unlike Tribal council members who are not subject to FICA in any situation, election workers earning \$1,200 or more for the calendar year are subject to FICA tax. Payments of \$600 or more paid to these employees are also reported on Form W-2. Do not report these payments on Form 1099-Misc.

Examples follow to help clarify any questions you may have.

Situation 1: A Tribal government pays an individual \$500 in a calendar year for services as an election worker. The Tribe does not employ the individual in any other capacity.

Neither FICA tax nor income tax withholding applies to the \$500 paid to the election worker. Because the worker earns fees that are less than \$600, the Tribal government is not required to issue Form W-2, but the individual must still report the income on their federal income tax return.

Situation 2: A Tribal government pays an individual \$1,200 in a calendar year for services as an election worker. The Tribe does not employ the worker in any other capacity. FICA tax, but not income tax withholding, applies to the \$1,200 paid to the worker for the calendar year. The Tribal government must report on Form W-2 the \$1,200 and the FICA tax withheld, and the employee must report the full \$1,200 on their federal income tax return.

Situation 3: A Tribal government pays an individual \$200 in a calendar year for services as an election worker. The Tribe also employed the worker in another capacity, in which the worker earned wages of \$300 that are subject to income tax and FICA withholding.

Neither FICA nor income tax withholding applies to the \$200 paid to the worker for services as an election worker. The \$300 payment is subject to income tax withholding and FICA withholding. The Tribal government must report on Form W-2 the \$300 payment and the income tax withheld. The \$200 payment is not required to be reported because

the total of the two payments is less than \$600 for the calendar year. However, the full \$500 must be reported by the employee on their federal income tax return.

Situation 4: A Tribal government pays an individual \$200 in a calendar year for services as an election worker. The worker is also employed in another capacity, in which they earned wages of \$500 that are subject to income tax withholding and FICA withholding.

Neither FICA tax nor income tax withholding applies to the \$200 paid to the employee for services as an election worker, but the \$500 payment is subject to income tax withholding and FICA withholding. The Tribe must report on Form W-2 both the \$200 and the \$500 payments and the amount of income tax withheld. Box 1 of Form W-2 will reflect \$700 for total wages, Box 3 will reflect \$500 for FICA wages, and Box 5 will reflect \$500 for Medicare wages. The applicable federal income tax withheld will be shown in Box 2, while Boxes 4 and 6 will reflect the FICA and Medicare tax withheld. The full \$700 must be reported by the employee on their federal income tax return.

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- **Write: Internal Revenue Service**

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